

FINCAD™ PROFESSIONAL SERVICES TERMS AND CONDITIONS
VERSION No. 11.20.17

1. Introduction

1.1 **This Agreement:** These Professional Services Terms and Conditions together with the Service Order constitute a binding agreement (this “**Agreement**”) between FinancialCAD Corporation (“**FINCAD**”) and the Customer referenced in the Service Order (collectively the “**Parties**” and each a “**Party**”).

1.2 **Key Definitions:** In this Agreement: (a) “**Service Order**” means the statement of work or other ordering document that describes Services and Work Product (if any), expressly states that it incorporates these Professional Services Terms and Conditions, and is signed by both Parties; (b) “**Services**” means the professional services to be performed by FINCAD for Customer as expressly set out in the Service Order; and (c) “**Work Product**” means an item to be created by FINCAD as a result of Services. For greater certainty, the Service Order is not effective or binding unless and until it is signed by both Parties.

1.3 **Ancillary Documents:** If the Parties prepare and sign one or more additional documents (e.g. a requirements or specifications document) to describe or provide more details regarding Services and Work Product (each an “**Ancillary Document**”), then: (a) an Ancillary Document will not be effective or binding unless and until it is signed by both Parties; and (b) an Ancillary Document, when signed by both Parties, will be deemed part of the Service Order. In this Agreement, reference to the Service Order includes all related Ancillary Documents.

1.4 **Priority of Documents:** If there is a conflict or inconsistency between any of the documents that comprise this Agreement (each a “**Contract Document**”), then a Contract Document that expressly states that it amends or revises another Contract Document takes priority over the other Contract Document, and in the absence of an express statement of amendment or revision the order of priority is as follows: (a) these Professional Services Terms and Conditions; (b) the Service Order (not including Ancillary Documents); and (c) Ancillary Documents.

1.5 **FINCAD Software/Hosted Solutions:** For greater certainty and notwithstanding any other provision of this Agreement: (a) Work Product does not include any of FINCAD’s proprietary software (“**FINCAD Software**”) licensed by Customer pursuant to a separate, valid and subsisting written software license agreement between FINCAD and Customer (a “**Software License Agreement**”); and (b) Services do not include any FINCAD hosted solution (a “**Hosted Solution**”) made available for use by or on behalf of Customer pursuant to a separate, valid and subsisting written agreement between FINCAD and Customer (the “**Hosted Solution Agreement**”), or any ancillary service (e.g. maintenance, technical support or incident response) performed by FINCAD pursuant to either a Software License Agreement or a Hosted Solution Agreement.

2. Services and Work Product

2.1 **Engagement:** Subject to the terms and conditions of this Agreement, during the term of this Agreement FINCAD will perform Services and create Work Product (if any) as expressly set out in the Service Order.

2.2 **Change Management:** The Service Order may be changed from time to time by a written change order made by both Parties. For greater certainty, a change order may be used to change Services and Work Product or to add or clarify specifications or requirements for Services and Work Product. A change will not be effective or binding unless and until it is expressly confirmed in a written change order that is either signed or otherwise expressly approved in writing by both Parties. In this Agreement, reference to the Service Order means the Service Order as changed by written change orders signed by both Parties.

2.3 **Estimates:** Unless the Service Order expressly states otherwise, schedules, quantities and fees specified in the Service Order are reasonable estimates based on information known to FINCAD when the Service Order is prepared. The amount of Services performed by FINCAD may be more or less than the amount estimated in the Service Order, and Customer will pay for all Services performed in accordance with the Service Order. If the amount of Services and applicable fees will materially exceed an estimate in the Service Order, then FINCAD will notify Customer in a timely manner.

2.4 **Delay Events:** If there is a Delay Event, then all project schedules and timetables in the Service Order will be deemed extended to accommodate the Delay Event, and on request by FINCAD Customer will pay additional fees and expenses (calculated on a time and materials basis) for additional work performed by FINCAD as a result of the Delay Event. In this Agreement, “**Delay Event**” means any of the following: (a) Customer fails to perform any of Customer’s tasks or obligations under this Agreement in a timely manner or otherwise causes (by act or omission) a delay in FINCAD’s performance of work under the Service Order; (b) a dependency specified in the Service Order is not fulfilled in a timely manner or at all; and (c) an assumption specified in the Service Order is incorrect or fails to occur in a timely manner or at all.

2.5 **Pre-paid Service Days:** If the Service Order relates to the purchase of pre-paid Service Days, then unless the Service Order expressly specifies otherwise: (a) a “**Service Day**” means a total of eight (8) hours of Services performed by FINCAD personnel; (b) FINCAD will apply pre-paid Service Days against Services as and when performed by FINCAD; (c) on request by Customer, FINCAD will provide Customer with details of the Services performed by FINCAD and the remaining amount of unused pre-paid Service Days (if any); and (d) all unused pre-paid Service Days will expire twelve (12) months after the Effective Date specified in the Service Order except and to the extent that Customer’s delay in using the pre-paid Service Days is due to a failure by FINCAD to schedule and perform requested Services.

3. Review/Testing and Acceptance

3.1 **Application:** This section 3 applies to each item of Work Product that is expressly identified in the Service Order as requiring acceptance by Customer.

3.2 **Definitions:** In this Agreement: (a) “**Acceptance Criteria**” means, with respect to an item of Work Product, the specifications and requirements for the item of Work Product expressly set out in the Service Order; and (b) “**Review/Testing Period**” means, with respect to an item of Work Product, ten (10) days, or a longer period expressly set out in the Service Order, after the date on which FINCAD delivers the item of Work Product to Customer for review/testing and acceptance.

3.3 **Delivery/Notices:** Unless the Service Order expressly states otherwise: (a) FINCAD may deliver an item of Work Product to Customer by either: (i) sending the item of Work Product by email to Customer’s Project Manager; (ii) advising Customer’s Project Manager that the item of Work Product is available for download from a designated site; or (iii) making the item of Work Product available for remote, online access and use by or on behalf of Customer; and (b) a notice required under this section 3 may be delivered to Customer by email to Customer’s Project Manager and to FINCAD by email to FINCAD’s Project Manager.

3.4 **Review/Testing Procedure:** On FINCAD’s delivery of an item of Work Product to Customer, Customer will promptly review and test (if appropriate) the item of Work Product to determine whether the item of Work Product conforms to the Acceptance Criteria. If an item of Work Product conforms to the Acceptance Criteria, then Customer will promptly deliver to FINCAD a notice accepting the item of Work Product. If an item of Work Product does not conform to the Acceptance Criteria, then by or before the end of the Review/Testing Period Customer will deliver to FINCAD a written rejection notice describing with reasonable specificity and detail all defects and nonconformities in the item of Work Product (collectively the “**Nonconformities**”). If Customer delivers a written rejection notice regarding an item of Work Product by or before the end of the Review/Testing Period, then FINCAD will revise the item of Work Product to remedy the Nonconformities specified in Customer’s rejection notice and deliver the revised item of Work Product to Customer for further review and testing in accordance with this section 3.4, and the Review/Testing Period for the revised item of Work Product will commence on the date that FINCAD delivers the revised item of Work Product to Customer for further review and testing.

3.5 **Acceptance:** Subject to section 3.6, the process described in section 3.4 will be repeated for each item of Work Product until FINCAD remedies all Nonconformities specified in Customer’s rejection notices or until the item of Work Product is accepted or deemed accepted by Customer. An item of Work Product will be deemed to conform to the Acceptance Criteria and be accepted by Customer if: (a) Customer does not give a written rejection notice for the item of Work Product by or before the end of the Review/Testing Period; or (b) Customer begins using the item of Work Product for any purpose other than for review/testing and acceptance pursuant to this section 3.

3.6 **Consequences of Failure:** If an item of Work Product is not accepted or deemed accepted by Customer within thirty (30) days after the date the item of Work Product is initially delivered to Customer

for review/testing and acceptance, then FINCAD in its discretion may either: (a) extend the time for the review and testing process; (b) negotiate with Customer a change to the Acceptance Criteria for the item of Work Product; or (c) terminate this Agreement and all licenses for Customer's use of the item of Work Product effective on notice to Customer and refund to Customer the fees (if any) previously paid by Customer for the item of Work Product.

4. Fees, Taxes and Related Matters

4.1 **Fees:** Customer will pay to FINCAD the fees and expenses specified in the Service Order. If the Service Order specifies a fixed fee for a particular Service or item of Work Product, then the fee payable by Customer for the Service or item of Work Product will be the specified fixed fee amount. If the Service Order does not specify a fixed fee for a particular Service or item of Work Product, then the fee for the Service or item of Work Product will be calculated based on hours/days worked by FINCAD personnel and the hourly/daily rates specified or referenced in the Service Order, provided that if hourly/daily rates are not specified or referenced in the Service Order then the fees will be based on FINCAD's then-current standard, non-discounted professional services rates.

4.2 **Expenses:** If the Service Order specifies that FINCAD personnel will travel to Customer's premises outside the personnel's metropolitan area of their principal office in order to perform Services, then Customer will reimburse FINCAD for the reasonable, out-of-pocket travel, lodging and incidental expenses incurred by those FINCAD personnel.

4.3 **Taxes:** Fees and expenses are exclusive of all applicable federal, state, provincial, and municipal sales, use, value-added, property, excise, import, foreign, withholding and other governmental taxes, duties, charges, levies, fees, excises, tariffs and assessments of any nature whatsoever now or hereafter imposed (collectively "**Taxes**"). Customer is solely responsible and liable for, and will pay and remit promptly, all Taxes (other than corporate income taxes payable by FINCAD) associated with, based on or due as a result of amounts payable under this Agreement, and all related interest, penalties and expenses.

4.4 **Payment Terms:** Fees and expenses will be invoiced and payable: (a) in accordance with the payment schedule, if any, specified in the Service Order; or (b) on a monthly basis, if the Service Order does not specify a payment schedule. Each invoice is payable on receipt, provided that FINCAD may require advance payment of fees and expenses before performing Services. Except as expressly set out in this Agreement, payment obligations are not cancellable and advance payments are non-refundable under any circumstances. All fees and expenses and applicable Taxes are payable in the currency specified in the Service Order, provided that if no currency is specified fees, expenses and Taxes are payable in U.S. currency. Overdue payments will be subject to interest at a rate of 1½% for each month (18% per annum) or fraction thereof that the payment is overdue, or the highest rate permitted by applicable law, whichever is lower. Except to the extent required by applicable law, all amounts payable to FINCAD under this Agreement are payable in full without deduction or withholding. If Customer is prohibited by applicable law from making a payment free of deductions or withholdings, then Customer will pay an additional amount to FINCAD as necessary to ensure that the actual amount received by FINCAD after all deductions and withholdings and after payment of any additional Taxes or other charges due as a consequence of the payment of the additional amount will equal the amount that would have been received by FINCAD if deductions and withholdings were not required.

5. FINCAD Personnel

5.1 **FINCAD Personnel:** FINCAD will assign personnel (employees, consultants and subcontractors) proficient with FINCAD's software products and technologies to perform Services. If Customer is dissatisfied with the performance of any FINCAD personnel, Customer will promptly give FINCAD notice of Customer's dissatisfaction and FINCAD will take commercially reasonable steps to address Customer's reasonable concerns.

5.2 **FINCAD Project Manager:** FINCAD will appoint an individual to be FINCAD's "**Project Manager**" and will authorize the individual to be FINCAD's primary contact regarding this Agreement. FINCAD will promptly notify Customer of the appointment of FINCAD's Project Manager and any replacement of FINCAD's Project Manager.

5.3 **Non-Solicitation of FINCAD Personnel:** During the term of this Agreement and for twelve (12) months after the term of this Agreement, Customer will not solicit the employment or services of any FINCAD personnel involved in performing Services.

5.4 **On-Site Performance:** If FINCAD personnel perform work at Customer's premises, then the FINCAD personnel will comply with Customer's reasonable written security policies attached to or expressly referenced (by policy name and version number or date) in the Service Order.

5.5 **Subcontractors:** For greater certainty, FINCAD in its discretion may engage subcontractors (including FINCAD affiliates) to assist FINCAD to perform its obligations under this Agreement, provided that FINCAD is and will remain fully responsible for all Services and Work Product.

6. Customer's Responsibilities

6.1 **Project Manager:** Customer will appoint an individual to be Customer's "**Project Manager**" and will authorize the individual to be Customer's primary contact regarding this Agreement and to make binding decisions on behalf of Customer. Customer will promptly notify FINCAD of the appointment of Customer's Project Manager and any replacement of Customer's Project Manager.

6.2 **Access and Facilities:** If FINCAD personnel are required to perform work at Customer's premises, then Customer will provide FINCAD personnel with reasonable access to Customer's relevant computer systems and facilities during normal business hours, reasonably required onsite workspace, office support services and supplies, and reasonably requested use of equipment and communications facilities (including Internet access).

6.3 **Reasonable Assistance/Information:** Customer will reasonably cooperate with and assist FINCAD to perform Services and create Work Product, and will promptly perform the duties and tasks specified in the Service Order and other reasonable tasks as requested by FINCAD. Customer will timely provide FINCAD with all information reasonably requested by FINCAD in connection with FINCAD's performance of Services under this Agreement, and will ensure that all information provided to FINCAD is accurate and complete.

6.4 **Technical Requirements for Use of Work Product:** Customer is solely responsible and liable for obtaining, provisioning, configuring, maintaining, paying for, and protecting from loss and damage, all equipment, software and services necessary for Customer's use of any item of Work Product and all data used in association with the item of Work Product.

6.5 **Customer's Costs:** Customer is solely responsible and liable for all costs and expenses incurred by Customer and its personnel arising from, connected with, or relating to Customer's performance of its obligations under this Agreement.

6.6 **Third Party Materials:** FINCAD may require Customer to procure, or to authorize FINCAD to procure on Customer's behalf, certain proprietary materials (including software and computer code) owned by a third party supplier for FINCAD to use in the performance of Services or to include in an item of Work Product (collectively "**Third Party Materials**"). Customer is solely responsible and liable for procuring (including paying all applicable fees) all rights, title and interests in Third Party Materials required for FINCAD to use Third Party Materials in the performance of Services or to include Third Party Materials in an item of Work Product (as applicable) and for Customer to use Third Party Materials in connection with a Service or as part of an item of Work Product (as applicable).

6.7 **Customer Materials:** If Customer provides to FINCAD materials owned or licensed by Customer for FINCAD to use in the performance of Services or to include in an item of Work Product (collectively "**Customer Materials**"), then Customer will ensure that Customer has all rights, title and interests required for Customer to authorize and license FINCAD to use Customer Materials as expressly set out in this Agreement and for Customer to use Customer Materials in connection with a Service or as part of an item of Work Product (as applicable).

6.8 **Indemnity by Customer:** During and after the term of this Agreement, Customer will defend, indemnify and hold harmless FINCAD and each of FINCAD's personnel and representatives from and against all third party Claims and third party Proceedings arising from, connected with or relating to: (a) the use of a Service or an item of Work Product by or on behalf of Customer or the results obtained therefrom; (b) the use of Third Party Materials or Customer Materials as set out in this Agreement; or (c) breach of this Agreement by Customer; except that the foregoing does not apply to an IP Infringement

Proceeding or IP Infringement Judgment for which FINCAD is obligated to defend or indemnify Customer pursuant to section 9. If FINCAD requests that Customer defend and indemnify FINCAD and FINCAD's personnel and representatives from and against a third party Claim or third party Proceeding pursuant to this section 6.8, then FINCAD will: (i) give Customer prompt notice of the Claim or Proceeding (provided that a failure to give prompt notice will only relieve Customer of Customer's obligations under this section 6.8 if the failure to give prompt notice has caused, or is likely to cause, prejudice to Customer); (ii) grant control of the defence and settlement of the Claim or Proceeding to Customer (provided that the Claim or Proceeding will not be settled without FINCAD's express prior written consent, which consent will not be unreasonably withheld or delayed); (iii) agree that the same legal counsel may jointly represent FINCAD and FINCAD's personnel and representatives and Customer in the Proceeding (if Customer is a party to the Proceeding); and (iv) reasonably co-operate with Customer regarding the defence and settlement of the Claim or Proceeding. Notwithstanding anything in this Agreement to the contrary, FINCAD and its personnel and representatives retain the right to participate (with counsel of their own selection at their sole cost and expense) in the defense of and settlement negotiations relating to any Claim or Proceeding. In this Agreement: (1) "**Claim**" means claim, counterclaim, complaint, demand, cause of action, liability, obligation, damage, legal fees, costs, expenses and disbursements (including reasonable attorneys' fees and court costs) of any nature or kind, whatsoever and howsoever arising, whether known or unknown, whether pursuant to law or contract or both, and whether in any court or before any arbitrator or other body, board or tribunal; and (2) "**Proceeding**" means action, suit, proceeding or hearing of any nature and kind in any court or before any arbitrator or other body, board or tribunal.

7. Customer's License to Use Work Product

7.1 Work Product Relating to FINCAD Licensed Software

(a) **Application:** Unless the Parties expressly agree in writing (including in the Service Order) otherwise, this section 7.1 applies to each item of Work Product that FINCAD delivers to Customer and that is designed to be used by Customer in connection with Customer's use of FINCAD Software licensed by Customer pursuant to Software License Agreement.

(b) **Technology:** If an item of Work Product is software or other technology, then subject to the provisions of this Agreement (including sections 7.3 and 7.4) the item of Work Product is deemed part of the relevant FINCAD Software, and Customer may use the item of Work Product as part of the relevant FINCAD Software in accordance with the Software License Agreement, including all restrictions and requirements applicable to the use of FINCAD Software.

(c) **Documentation:** If an item of Work Product is documentation, then subject to the provisions of this Agreement (including sections 7.3 and 7.4) the documentation is deemed part of the technical documentation relating to the relevant FINCAD Software, and Customer may use the item of Work Product as part of the technical documentation for the relevant FINCAD Software in accordance with the Software License Agreement.

7.2 Work Product Relating to FINCAD Hosted Solution

(a) **Application:** Unless the Parties expressly agree in writing (including in the Service Order) otherwise, this section 7.2 applies to each item of Work Product that relates to Customer's use of a Hosted Solution pursuant to a Hosted Solution Agreement.

(b) **Technology:** If an item of Work Product is software or other technology that FINCAD makes part of the Hosted Solution, then subject to the provisions of this Agreement (including sections 7.3 and 7.4) the item of Work Product is deemed part of the Hosted Solution and Customer may use and authorize other persons to use the item of Work Product as part of the Hosted Solution in accordance with the Hosted Solution Agreement.

(c) **Documentation:** If an item of Work Product is documentation regarding the Hosted Solution that FINCAD delivers to Customer, then subject to the provisions of this Agreement (including sections 7.3 and 7.4) the item of Work Product is deemed part of the technical documentation for the Hosted Solution, and Customer may use and authorize other persons to use the item of Work Product as part of the technical documentation for the Hosted Solution in accordance with the Hosted Solution Agreement.

7.3 Third Party Materials/Customer Materials: For greater certainty: (a) the licenses set out in sections 7.1 and 7.2 do not apply to Third Party Materials or Customer Materials; and (b) Customer is

solely responsible and liable for ensuring that Customer has all rights, title and interests required for Customer to use Third Party Materials and Customer Materials in connection with a Service or as part of an item of Work Product (as applicable).

7.4 Embedded Third Party Components: An item of Work Product may include components (including computer code) procured by FINCAD from third parties (each an “**Embedded Third Party Component**”), each of which: (a) may be used by Customer only as part of the item of Work Product; and (b) is subject to the provisions of this Agreement and any applicable third party license agreement or other terms and conditions, copies of which will be included or referenced in documentation regarding the item of Work Product provided or made available by FINCAD to Customer.

8. Ownership/Proprietary Rights

8.1 FINCAD Ownership and Use of Work Product: Notwithstanding any other provision of this Agreement except section 8.4, as between the Parties FINCAD and FINCAD’s licensors own and will retain all rights, title and interests throughout the world in, to and associated with each item of Work Product and all related intellectual property rights. Customer will not acquire any right, title or interest in, to or associated with any item of Work Product or any related intellectual property rights except for the limited license to use items of Work Product as expressly set out in this Agreement. Customer acknowledges that FINCAD and its licensors and their respective successors, assigns and licensees have and will retain the unlimited and unrestricted right to use and commercialize each item of Work Product and all knowledge, know-how, information, materials and creations of any kind learned, derived or created in the course of the performance of the Services. FINCAD reserves all rights that are not expressly granted in this Agreement.

8.2 Assignment/Waiver: If and to the extent that Customer or any of Customer’s personnel contribute to the design, development, creation, modification or provision of an item of Work Product, then subject to section 8.4 Customer hereby irrevocably and unconditionally: (a) transfers and assigns, and agrees to transfer and assign, to FINCAD all of Customer’s right, title and interest in, to and associated with the item of Work Product and all related intellectual property rights; and (b) waives, and agrees to waive, in favour of FINCAD and its successors, assigns and licensees all non-transferable rights (including moral rights) Customer may have in, to or associated with the item of Work Product and all related intellectual property rights. If and to the extent that the foregoing assignment, transfer and waiver in this section 8.2 regarding an item of Work Product are not effective for any reason, then subject to section 8.4 Customer hereby grants, and agrees to grant, to FINCAD a non-exclusive, irrevocable, perpetual, world-wide, fully transferable, fully sublicensable, royalty-free, fully paid-up license to use and commercialize the item of Work Product for any and all purposes whatsoever in FINCAD’s discretion, and on request by FINCAD Customer will execute and deliver to FINCAD an irrevocable transfer, assignment and waiver (in a form reasonably requested by FINCAD) of all Customer’s right, title and interest in, to and associated with the item of Work Product and all related intellectual property rights. Customer will ensure that each of Customer’s personnel who are involved in or contribute to the design, development, creation, modification or provision of an item of Work Product have by duly executed written agreement or by operation of law irrevocably and unconditionally: (i) assigned and transferred to Customer all right, title, and interest the personnel may have in, to or associated with the item of Work Product and all related intellectual property rights; and (ii) waived in favour of Customer and its assigns and licensees (including FINCAD) all non-transferable rights (including all moral rights) the personnel may have in, to or associated with the item of Work Product and all related intellectual property rights.

8.3 Feedback: If Customer or its personnel give feedback about Services or Work Product (including ideas or suggestions for enhancements or improvements to Services or Work Product) to FINCAD, then FINCAD and its successors, assigns and licensees may use and commercialize the feedback without providing any compensation to Customer or any other person. For greater certainty, Customer will ensure that its personnel and representatives do not include in feedback to FINCAD any information that is confidential or proprietary to Customer or any other person.

8.4 Customer Materials: As between the Parties, Customer owns and will retain all rights, title and interests throughout the world in, to and associated with all Customer Materials and all related intellectual property rights. Customer hereby grants, and agrees to grant, to FINCAD a non-exclusive, irrevocable, perpetual, world-wide, fully transferable, fully sublicensable, royalty-free, fully paid-up license to: (a) use Customer Materials to perform Services and create Work Product, including by embedded or including Customer Materials in Work Product; and (b) unless the Service Order expressly states otherwise, to use

and commercialize Customer Materials (except for Customer's branding or other items that expressly and specifically refer to Customer) for any and all purposes whatsoever in FINCAD's discretion.

9. IP Infringement Indemnity by FINCAD

9.1 Definitions: In this Agreement: (a) "**IP Infringement Proceeding**" means an action brought against Customer by an unaffiliated third party in a court of competent jurisdiction in Canada, the United States of America, or the European Union that is based solely on allegations that Customer's use of Work Product in accordance with this Agreement infringes or misappropriates a patent, copyright, or trademark under the laws of Canada, the United States of America or the European Union that is owned by that unaffiliated third party; and (b) "**IP Infringement Judgment**" means a final judgment in favour of an unaffiliated third party issued in an IP Infringement Proceeding to the extent that the judgment is based on a finding that Customer's use of Work Product in accordance with this Agreement infringes or misappropriates a patent, copyright or trademark under the laws of Canada, the United States of America or the European Union that is owned by that unaffiliated third party.

9.2 Defence and Indemnity: Subject to sections 9.3 and 9.4, FINCAD will defend Customer against an IP Infringement Proceeding and indemnify Customer against a resulting IP Infringement Judgment, provided that Customer: (a) gives FINCAD prompt notice of the IP Infringement Proceeding and any related demand (provided that a failure to give prompt notice will only relieve FINCAD of FINCAD's obligations under this section 9.2 if the failure to give prompt notice has caused, or is likely to cause, prejudice to FINCAD); (b) grants control of the defence and settlement of the IP Infringement Proceeding to FINCAD (provided that the IP Infringement Proceeding will not be settled in a way that requires Customer to take any affirmative action without Customer's express prior written consent, which consent will not be unreasonably withheld or delayed); (c) agrees that the same legal counsel may jointly represent both Customer and FINCAD in the IP Infringement Proceeding (if FINCAD is a party to the proceeding); and (d) on request by FINCAD, reasonably cooperates with and assists FINCAD regarding the defence and settlement of the IP Infringement Proceeding. Customer retains the right to participate (with counsel of Customer's own selection at Customer's sole cost and expense) in the defense of and settlement negotiations relating to an IP Infringement Proceeding.

9.3 Remedies: Subject to section 9.4, if an IP Infringement Judgment prohibits Customer from continued use of an item of Work Product in accordance with this Agreement, or if at any time FINCAD reasonably believes that an item of Work Product is likely to become the subject of an IP Infringement Judgment, the FINCAD in its discretion will either: (a) obtain for Customer the right to continue to lawfully use the item of Work Product in accordance with this Agreement; (b) replace or modify the item of Work Product to make it non-infringing; or (c) terminate Customer's license to use the item of Work Product and refund to Customer the fees actually paid by Customer to FINCAD for item of Work Product during the twelve (12) months immediately before the termination date, and on termination of the license Customer will immediately cease using the item of Work Product.

9.4 Exclusions/Limitation: Sections 9.2 and 9.3 do not apply to an IP Infringement Proceeding or an IP Infringement Judgment based on any actual or alleged infringement or misappropriation arising from, connected with, or relating to: (a) any Third Party Materials, Customer Materials or Embedded Third Party Components; (b) use of an item of Work Product with any service, technology, software, hardware, data or other material not provided by FINCAD or expressly authorized by this Agreement; (c) a functionality or other aspect of an item of Work Product required to satisfy Customer's specifications, requirements or other written instructions; (d) a modification of an item of Work Product by a person other than FINCAD; (e) Customer's failure to use a non-infringing version of an item of Work Product made available to Customer by FINCAD; (f) use of an item of Work Product in breach of this Agreement; or (g) a breach of this Agreement by Customer or any wrongful act or omission by Customer or any person for whom Customer is responsible under this Agreement or at law. Notwithstanding any other provision of this Agreement, in no event and under no circumstances will the total aggregate amount of FINCAD's obligations and liabilities pursuant to this section 9 (including all legal fees paid by FINCAD to defend against IP Infringement Proceedings and all amounts paid by FINCAD to settle IP Infringement Proceedings or to satisfy any obligations or liabilities resulting from any IP Infringement Judgments) ever exceed the total amount of fees actually paid by Customer to FINCAD pursuant to this Agreement during the twelve (12) months immediately before the date on which either Party first receives notice of an actual or reasonably anticipated IP Infringement Proceeding.

9.5 **Exclusivity:** This section 9 states Customer's sole and exclusive remedies, and FINCAD's entire responsibility and liability, for any and all claims or proceedings arising from, connected with, or relating to any actual or alleged infringement or misappropriation of any rights (including any intellectual property right) of any third party.

10. Confidential Information/Personal Information

10.1 Confidential Information:

(a) **Definition:** In this Agreement, "**Confidential Information**" means, subject to section 10.1(b), all non-public information, in any form and on any medium, that is expressly identified in writing (including the Service Order) by a Party (the "**Disclosing Party**") as confidential and is disclosed or otherwise made available by the Disclosing Party to the other Party (the "**Receiving Party**") in connection with the performance of this Agreement; and FINCAD's Confidential Information includes (without the need to expressly identify it as confidential) all information (including product roadmaps) relating to FINCAD Software, Hosted Solutions and other technologies, products and services.

(b) **Exceptions:** Information will not be considered to be Disclosing Party's Confidential Information to the extent, but only to the extent, that the information is: (i) already known to the Receiving Party free of any restriction at the time it is obtained from the Disclosing Party; (ii) subsequently learned by the Receiving Party from an independent third party free of any restriction and without breach of this Agreement, an agreement with the third party or any other confidentiality obligation; (iii) or becomes generally available to the public at large, through no wrongful act or omission by or on behalf of the Receiving Party; or (iv) independently developed by the Receiving Party without reference to any of the Disclosing Party's Confidential Information.

(c) **Restriction:** Customer will not disclose or make available to FINCAD any of Customer's Confidential Information unless FINCAD expressly requests the Confidential Information for the purpose of performing Services or providing Work Product.

(d) **Permissible Use/Duty to Protect:** Subject to sections 10.1(e) and 10.1(g), the Receiving Party will: (i) use the Disclosing Party's Confidential Information only during the term of this Agreement and only to the extent necessary to perform the Receiving Party's obligations or exercise the Receiving Party's rights under this Agreement; (ii) disclose the Disclosing Party's Confidential Information only to the Receiving Party's personnel and only to the extent that the disclosure is necessary to perform the Receiving Party's obligations or exercise the Receiving Party's rights under this Agreement; (iii) both during and indefinitely after the term of this Agreement protect the confidentiality of the Disclosing Party's Confidential Information using the same degree of care as the Receiving Party affords to its own confidential information of a similar nature that the Receiving Party desires not to be published or disseminated, and in no event less than reasonable care, to prevent the unauthorized use or disclosure of the Disclosing Party's Confidential Information; and (iv) ensure that each person to whom the Receiving Party discloses the Disclosing Party's Confidential Information complies with the restrictions and requirements set out in items (i), (ii) and (iii) above.

(e) **Additional Permitted Disclosures:** Notwithstanding the restrictions set out in section 10.1(d), the Receiving Party may disclose the Disclosing Party's Confidential Information: (i) to the extent the disclosure is required by a valid order or direction of a court or government agency of competent jurisdiction and authority or by applicable law, provided that before making the disclosure the Receiving Party gives reasonable notice (if the notice is not prohibited by applicable law) to the Disclosing Party of the potential disclosure and on request by the Disclosing Party reasonably assists the Disclosing Party to obtain a protective order preventing or limiting the potential disclosure or use of the Confidential Information; and (ii) to the Receiving Party's legal, accounting and tax advisors if and to the extent that the disclosure is required for a bona fide legal, accounting or tax purpose (as applicable) and provided that: (1) the advisor is subject to professional obligations of confidentiality regarding the disclosed Confidential Information; and (2) the Receiving Party is fully responsible and liable for the advisor's unauthorized use or disclosure of the disclosed Confidential Information.

(f) **Return/Destruction of Confidential Information:** On expiration or termination of this Agreement or at any time on request by the Disclosing Party, the Receiving Party will use commercially reasonable efforts to promptly permanently delete and destroy all documents and records containing the Disclosing Party's Confidential Information in the possession or control of the Receiving Party or any person to whom the Receiving Party provided the Disclosing Party's Confidential Information pursuant to

section 10.1(d), except that the Receiving Party may retain documents and records containing the Disclosing Party's Confidential Information to the extent required for legal compliance or reasonable contract administration purposes. On request by the Disclosing Party, the Receiving Party will deliver to the Disclosing Party a declaration signed by a senior officer of the Receiving Party certifying that the Receiving Party has complied with this section 10.1(f). For greater certainty, a document or record containing the Disclosing Party's Confidential Information that is retained by the Receiving Party or any person to whom the Receiving Party provided the Confidential Information pursuant to section 10.1(d) will continue to be subject to all of the restrictions and requirements set out in this section 10.1.

(g) **Residual Knowledge:** Notwithstanding any other provision of this Agreement, nothing in this Agreement restricts an individual who has had access to Confidential Information in accordance with this Agreement from using for any purpose whatsoever any residual knowledge (including any general techniques, ideas, concepts, practices, learning or know-how) that the individual retains in his or her unaided memory after using the Confidential Information in accordance with this Agreement and that the individual does not identify as being subject to the confidentiality restrictions and requirements set out in this section 10.1.

10.2 Personal Information:

(a) **Definition:** In this Agreement, "**Personal Information**" means information about an identifiable individual (including the individual's name, postal address, email address, telephone number, date of birth, age, gender and financial information), the collection, use, disclosure, storage or retention of which is regulated by applicable law.

(b) **Acknowledgement and Obligations:** The Parties acknowledge that in connection with this Agreement a Party (the "**PI Disclosing Party**") may be reasonably required to disclose (orally or in writing) to the other Party ("**PI Receiving Party**") Personal Information regarding the PI Disclosing Party's personnel or other individuals. The PI Disclosing Party will comply with all applicable laws relating to the PI Disclosing Party's disclosure of Personal Information to the PI Receiving Party, including obligations to obtain valid consents to the disclosure of the Personal Information to the PI Receiving Party and to the PI Receiving Party's use, disclosure, storage and retention of the Personal Information. The PI Receiving Party will comply with all applicable laws relating to the PI Receiving Party's collection, use, disclosure, storage and retention of Personal Information disclosed by the PI Disclosing Party. Each Party will reasonably cooperate with and assist the other Party to comply with its obligations under applicable laws regarding the collection, use, disclosure, storage and retention of Personal Information.

(c) **Highly Sensitive Personal Information:** A PI Disclosing Party will use commercially reasonable efforts not to disclose Highly Sensitive Personal Information to the PI Receiving Party without the PI Receiving Party's express prior written consent in each instance. A PI Disclosing Party will promptly notify the PI Receiving Party if the PI Disclosing Party discovers that it disclosed Highly Sensitive Personal Information to the PI Receiving Party without the PI Receiving Party's prior written consent. In this Agreement, "**Highly Sensitive Personal Information**" means an individual's financial-related information (including payment card information), health-related information or social insurance/security number.

11. Warranties/Disclaimer

11.1 **Services:** FINCAD warrants that FINCAD will perform the Services in a competent manner consistent with generally accepted reasonable standards of skill and competence in the software professional services industry. If there is a breach by FINCAD of the foregoing warranty, Customer's sole and exclusive remedies, and FINCAD's sole obligations and liabilities to Customer, are as follows, at FINCAD's option: (a) FINCAD will re-perform the deficient Services at no additional cost to Customer; or (b) Customer will cease using and return to FINCAD all Work Product created as a result of the deficient Services and FINCAD will refund the portion of the fees paid by Customer attributable to the deficient Services. The foregoing warranty and remedies will be available to Customer only if a deficiency notice is delivered to FINCAD within ten (10) days after the date on which the deficient Services were performed.

11.2 **Work Product:** FINCAD will use commercially reasonable efforts consistent with standard industry practice intended to ensure that each item of Work Product relating to Customer's use of FINCAD Software is, when the item is first delivered or otherwise made available by FINCAD to

Customer, free of any virus or other software code designed to harm or permit unauthorized access to software, hardware or data.

11.3 DISCLAIMER: EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES BY FINCAD EXPRESSLY SET OUT IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SERVICES AND WORK PRODUCT ARE PROVIDED “AS IS AND WITH ALL FAULTS”, AND WITHOUT ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES OF ANY NATURE OR KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, OR ARISING FROM CUSTOM OR TRADE USAGE OR BY ANY COURSE OF DEALING OR COURSE OF PERFORMANCE, INCLUDING ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES OF OR RELATING TO DURABILITY; FITNESS FOR A PARTICULAR PURPOSE; MERCHANTABILITY; NON-INFRINGEMENT; PERFORMANCE; QUALITY; RESULTS; SUITABILITY; TIMELINESS; TITLE; OR WORKMANLIKE EFFORT; ALL OF WHICH ARE HEREBY DISCLAIMED BY FINCAD TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. CUSTOMER IS SOLELY RESPONSIBLE AND LIABLE FOR THE SELECTION AND USE OF SERVICES AND WORK PRODUCT TO ACHIEVE CUSTOMER’S INTENDED RESULTS. CUSTOMER USES SERVICES AND WORK PRODUCT AT CUSTOMER’S OWN RISK, AND IS SOLELY RESPONSIBLE AND LIABLE FOR VERIFYING ALL RESULTS FROM THE USE OF SERVICES AND WORK PRODUCT. CUSTOMER ACKNOWLEDGES THAT WORK PRODUCT CREATED FOR USE WITH CURRENT VERSIONS OF FINCAD SOFTWARE, A HOSTED SOLUTION OR OTHER PRODUCT OR SERVICE MIGHT NOT BE COMPATIBLE WITH FUTURE VERSIONS OR RELEASES OF THE FINCAD SOFTWARE, HOSTED SOLUTION OR OTHER PRODUCT OR SERVICE.

12. LIABILITY EXCLUSIONS/LIMITATIONS

12.1 LIABILITY EXCLUSIONS/LIMITATIONS: NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT EXCEPT SECTION 12.2, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW:

(A) **EXCLUSIONS:** FINCAD GROUP’S LIABILITY (IF ANY) TO CUSTOMER GROUP ARISING FROM, CONNECTED WITH OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING SERVICES AND WORK PRODUCT) IS LIMITED TO DIRECT DAMAGES SUFFERED BY CUSTOMER ONLY, AND IN NO EVENT AND UNDER NO CIRCUMSTANCES WILL FINCAD GROUP BE LIABLE TO CUSTOMER GROUP OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY LOSS OR DAMAGE, OR ANY LOSS OF DATA, LOSS OF INFORMATION, LOSS OF BUSINESS, LOSS OF MARKETS, LOSS OF SAVINGS, LOSS OF INCOME, LOSS OF PROFITS, LOSS OF USE, LOSS OF PRODUCTION OR LOSS OF GOODWILL, ANTICIPATED OR OTHERWISE;

(B) **LIMITATIONS:** IN NO EVENT AND UNDER NO CIRCUMSTANCES WILL FINCAD GROUP’S TOTAL AGGREGATE LIABILITY TO CUSTOMER GROUP ARISING FROM, CONNECTED WITH OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING SERVICES AND WORK PRODUCT) EVER EXCEED THE AMOUNT OF FEES (IF ANY) ACTUALLY PAID BY CUSTOMER TO FINCAD FOR THE SERVICE OR THE ITEM OF WORK PRODUCT TO WHICH THE LIABILITY RELATES;

(C) **APPLICATION:** THIS SECTION 12.1 APPLIES TO LIABILITY UNDER ANY THEORY OF LAW (INCLUDING CONTRACT, TORT, STRICT LIABILITY AND STATUTORY LIABILITY), REGARDLESS OF ANY NEGLIGENCE OR OTHER FAULT OR WRONGDOING (INCLUDING FUNDAMENTAL BREACH OR GROSS NEGLIGENCE) BY FINCAD GROUP OR ANY PERSON FOR WHOM FINCAD IS RESPONSIBLE, EVEN IF OTHER REMEDIES ARE NOT AVAILABLE OR DO NOT ADEQUATELY COMPENSATE FOR THE LOSS OR DAMAGE, AND EVEN IF FINCAD HAS BEEN ADVISED OF THE POSSIBILITY OF THE LOSS OR DAMAGE BEING INCURRED; AND

(D) **DEFINITIONS:** IN THIS SECTION 12.1, “**FINCAD GROUP**” MEANS EACH OF FINCAD AND ITS AFFILIATES AND EACH OF THEIR RESPECTIVE PAST, PRESENT AND FUTURE SUPPLIERS, SUBCONTRACTORS, LICENSORS AND REPRESENTATIVES; AND “**CUSTOMER GROUP**” MEANS EACH OF CUSTOMER AND ITS AFFILIATES AND EACH OF THEIR RESPECTIVE PAST, PRESENT AND FUTURE PERSONNEL AND REPRESENTATIVES.

12.2 EXCEPTIONS: THE EXCLUSIONS AND LIMITATIONS SET OUT IN SECTION 12.1 DO NOT APPLY TO: (a) LIABILITY FOR BODILY INJURY OR DEATH CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL ACT OR OMISSION OF FINCAD; OR (b) FINCAD’S OBLIGATIONS PURSUANT TO SECTION 9.

12.3 FAIR ALLOCATION OF LIABILITY: THIS AGREEMENT PRESENTS A FAIR ALLOCATION OF RISK AND LIABILITY, AND THE RISK ALLOCATION PROVISIONS IN THIS AGREEMENT (INCLUDING SECTIONS 6.8, 9, 11.3 AND 12) ARE ESSENTIAL PARTS OF THE BARGAIN BETWEEN THE PARTIES, A CONTROLLING FACTOR IN SETTING THE FEES PAYABLE BY CUSTOMER, AND AN INDUCEMENT TO THE PARTIES TO ENTER INTO THIS AGREEMENT.

13. Term and Termination

13.1 **Term:** The term of this Agreement will commence on the Effective Date specified in the Service Order and will continue until the earlier of the following: (a) all Services are completed and each item of Work Product that is subject to acceptance by Customer is accepted or deemed accepted by Customer; (b) the duration of the Services specified in the Service Order has expired; or (c) this Agreement is terminated in accordance with the provisions of this Agreement.

13.2 **Termination for Convenience:** Notwithstanding any other provision of this Agreement, and unless the Service Order expressly states otherwise, Customer in its discretion may terminate this Agreement for convenience effective on fourteen (14) days' notice of termination to FINCAD. For greater certainty, if Customer terminates this Agreement pursuant to this section 13.2, Customer will not be entitled to a refund of any previously paid fees, and Customer will pay FINCAD for all Services performed and Work Product provided by FINCAD before the date this Agreement terminates.

13.3 **Termination for Cause:** Notwithstanding any other provision of this Agreement, either Party in its discretion may terminate this Agreement for cause effective immediately on delivery of a termination notice to the other Party if the other Party breaches this Agreement and has not remedied the breach within thirty (30) days after receipt of a default notice from the terminating Party identifying the breach and stating the terminating Party's intention to terminate this Agreement if the breach is not remedied within a thirty (30) day cure period, provided that the termination notice is delivered no later than fifteen (15) days after the end of the cure period.

13.4 **Consequences of Expiration/Termination:** On the termination of this Agreement for any reason whatsoever: (a) the Parties will remain responsible and liable for all of their respective obligations and liabilities accrued before the termination of this Agreement; and (b) Customer will promptly pay to FINCAD all fees and expenses for Services performed and Work Product (including work in process) created before the termination of this Agreement. For greater certainty, and unless the Parties expressly agree in writing otherwise, termination of this Agreement will not result in the termination of any other agreement (including any Software License Agreement or Hosted Solution Agreement) between Customer and FINCAD.

13.5 **Termination of Licenses for Work Product:** FINCAD in its discretion may terminate Customer's license to use an item of Work Product set out in section 7.1 or 7.2 (as applicable) for cause effective immediately on delivery of a termination notice to Customer if Customer uses the item of Work Product in breach of this Agreement or the Software License Agreement or Hosted Solution Agreement (as applicable) and has not remedied the breach within thirty (30) days after receipt of a default notice from FINCAD identifying the breach and stating FINCAD's intention to terminate the license if the breach is not remedied within a thirty (30) day cure period. For greater certainty, on termination of the license regarding an item of Work Product Customer will immediately cease all use of the item of Work Product.

13.6 **Suspension:** If Customer fails to make a payment when due under this Agreement, then FINCAD may suspend the performance of Services and the creation of Work Product until Customer has fully paid the overdue payment and has provided reasonable security for Customer's future payment obligations under this Agreement, and the suspension will not be a breach of this Agreement by FINCAD, entitle Customer to a refund or suspension of fee payment obligations, or give rise to any liability by FINCAD to Customer or any other person.

13.7 **Survival:** Notwithstanding any other provision of this Agreement, each of sections 4, 5.3, 6.4, 6.5, 6.8, 7, 8, 9, 10, 11.3, 12, 13.4, 13.5, 13.7 and 14, and all other provisions necessary to the interpretation or enforcement of those sections, will survive the expiration or termination of this Agreement and will remain in full force and effect and be binding on the Parties as applicable.

14. General

14.1 **Interpretation:** In this Agreement: (a) a reference to "**this Agreement**" refers to this Agreement as a whole (including the Service Order), and not just to the particular Contract Document or provision in which those words appear; (b) headings are for convenience only and do not define, limit or enlarge the scope or meaning of this Agreement or any of its provisions; (c) reference in a Contract Document to a section by number only is a reference to the appropriate section in the Contract Document in which the reference is made; (d) words importing the singular number only include the plural, and vice versa; (e) reference to a day, month, quarter or year means a calendar day, calendar month, calendar quarter or

calendar year, unless expressly stated otherwise; (f) a reference to currency is to the lawful money of the United States of America, unless expressly stated otherwise; (g) “**discretion**” or “**option**” mean a person’s sole, absolute and unfettered discretion or option; (h) “**including**” or “**includes**” means including or includes (as applicable) without limitation or restriction; (i) “**in writing**” or similar terms includes email, unless expressly stated otherwise; (j) “**law**” includes common law, equity, statutes and regulations, and reference to a specific statute includes all regulations made under the statute and all amendments to, or replacements of, the statute or any regulation made under the statute in force from time to time; and (k) “**person**” includes an individual, corporation, partnership, joint venture, association, trust, unincorporated organization, society and any other legal entity.

14.2 Notices: All notices under this Agreement will be in writing and, except as expressly set out in these Professional Services Terms and Conditions: (a) FINCAD will deliver notices to Customer by email or delivery to Customer’s addresses/numbers specified in the Service Order; and (b) Customer will deliver notices to FINCAD by courier to FINCAD (Attention Legal Department) at FINCAD’s address specified in the Service Order.

14.3 Governing Law and Disputes: This Agreement, the relationship of the Parties, and all related matters will be governed, construed and interpreted solely in accordance with the laws of the Province of Ontario, Canada and applicable federal laws of Canada, excluding any rules of private international law or the conflict of laws that would lead to the application of any other laws and excluding any laws that implement the United Nations Convention on Contracts for the International Sale of Goods. If Customer wishes to bring legal proceedings against FINCAD regarding this Agreement or any related matter, Customer will do so in either (as determined by Customer in its discretion) the courts of the Province of Ontario sitting in the City of Toronto, Ontario, Canada or the courts of the Province of British Columbia sitting in the City of Vancouver, British Columbia, Canada, and FINCAD irrevocably submits and attorns to the exclusive jurisdiction of those courts over those matters. If FINCAD wishes to bring legal proceedings against Customer regarding this Agreement or any related matter, FINCAD will do so in either (as determined by FINCAD in its discretion) the courts of the Province of Ontario sitting in the City of Toronto, Ontario, Canada or the courts of the jurisdiction of Customer’s office specified in the Service Order, and Customer irrevocably submits and attorns to the exclusive jurisdiction of those courts over those matters. Each Party irrevocably waives all rights to trial by jury.

14.4 Assignment: This Agreement is binding on and will enure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party may assign this Agreement without the express prior written consent of the other Party, which consent may be withheld in the other Party’s discretion, except that FINCAD may (without Customer’s consent) assign this Agreement or FINCAD’s rights and obligations under this Agreement in any merger, consolidation or reorganization of FINCAD or any acquisition or sale of all or substantially all of FINCAD’s assets relating to FINCAD’s software products.

14.5 Force Majeure: Notwithstanding any other provision of this Agreement, a Party will not be liable for any delay in performing or failure to perform any of the Party’s obligations under this Agreement (except for payment obligations) if and to the extent performance is delayed or prevented due to a cause or causes beyond the Party’s reasonable control; and any delay or failure of that kind will not be a breach of this Agreement and the time for performance of the affected obligations will be extended by a period that is reasonable in the circumstances.

14.6 Miscellaneous: The Parties are non-exclusive, independent contracting parties, and nothing in this Agreement or done pursuant to this Agreement will create or be construed to create a partnership, joint venture, agency, employment or other similar relationship between the Parties. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be invalid or unenforceable for any reason, then the provision will be deemed severed from this Agreement and the remaining provisions will continue in full force and effect without being impaired or invalidated in any way, unless as a result of the severance this Agreement would fail in its essential purpose. No consent or waiver by FINCAD to or of a breach of this Agreement by Customer will be effective unless in writing and signed by FINCAD. Except as expressly set out in this Agreement, the Parties’ respective rights and remedies under this Agreement are cumulative and not exclusive of any other rights or remedies to which they may be entitled under this Agreement or at law, and the Parties are entitled to pursue all of their respective rights and remedies concurrently, consecutively and alternatively. The Parties have expressly requested and required that this Agreement and all related documents be written in the English language. If a Contract Document requires the signature of both Parties, then the Contract Document may be signed and

delivered (including by facsimile transmission or by email in PDF or similar format) in counterparts, and each signed and delivered counterpart will be deemed an original, and both counterparts will together constitute one and the same document. The Parties have jointly contributed to the drafting of this Agreement, and this Agreement will not be interpreted in favour of or against either Party on the basis that the Party drafted particular provisions of this Agreement.

14.7 **Entire Agreement:** This Agreement sets out the complete agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all previous communications, representations, negotiations, discussions, agreements and understandings, whether oral or written, between the Parties with respect to the subject matter of this Agreement. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the Parties regarding the subject matter of this Agreement other than as expressly set out in this Agreement. This Agreement may not be amended except by a written document (not an email) that expressly states that it is an amendment to this Agreement and that is signed by both Parties or their respective successors or permitted assigns. Purchase orders and other documents issued by Customer and accepted by FINCAD in connection with this Agreement are for administrative convenience only, and the terms and conditions contained in those documents are of no force or effect and do not in any way amend the terms and conditions of this Agreement.
